

**MINUTES OF THE  
JUDICIAL RETENTION ELECTION TASK FORCE**  
Monday, October 1, 2007 – 9:00 a.m. – Room W130 House Building

**Members Present:**

Sen. D. Chris Buttars, Senate Chair  
Rep. Curtis Oda, House Chair  
Sen. Gregory S. Bell  
Sen. Lyle W. Hillyard  
Sen. Ross I. Romero  
Rep. Jackie Biskupski  
Rep. DeMar Bud Bowman  
Rep. Glenn A. Donnelson  
Rep. Lorie D. Fowlke  
Rep. Rosalind J. McGee  
Judge Hans Q. Chamberlain  
Chief Justice Christine M. Durham

**Members Absent:**

Rep. Eric K. Hutchings  
Judge Gary D. Stott

**Staff Present:**

Mr. Jerry D. Howe, Policy Analyst  
Mr. Mark B. Steinagel, Policy Analyst  
Ms. Esther Chelsea-McCarty, Associate General Counsel  
Mr. Christopher R. Parker, Associate General Counsel  
Ms. Amanda Majers, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Buttars called the meeting to order at 9:09 a.m.

**MOTION:** Rep. Hillyard moved to approve the minutes of the August 14, 2007 meeting. The motion passed unanimously with Rep. Biskupski absent for the vote.

**2. Working Group Report**

Sen. Buttars stated that the Working Group met three times to discuss the direction the Task Force should take in restructuring the judicial retention election process, and the way in which information about judges' performance should be presented to the voters. The Working Group unanimously concluded that an independent commission overseeing the judicial retention election process should be created.

Sen. Hillyard explained that the Working Group considered expanding the duties of the Judicial Conduct Commission to include overseeing the judicial performance evaluation program, but decided against it because it may require a constitutional amendment.

**3. 2008 General Session Draft Legislation, "Judicial Performance Evaluation Commission"**

Mr. Parker distributed and discussed 2008 General Session draft legislation, "Judicial Performance Evaluation Commission," which creates the Judicial Performance Evaluation Commission to administer the judicial performance evaluation process for retention election purposes. Mr. Parker also distributed and discussed "Judge Jones Performance Evaluation Survey Results," which provides a recommended format in which information would be presented in the voter information pamphlet.

#### **4. Building a Transparent Courthouse**

Ms. Rebecca Love Kourlis, Executive Director, Institute for the Advancement of the American Legal System (IAALS), and Mr. Jordan Singer, Director of Research, IAALS, introduced themselves. Ms. Kourlis recounted observations of Utah's court system and its history of utilizing judicial performance evaluations, and described the current social atmosphere under which the judicial system receives scrutiny for not being as responsive, as transparent, or as forthcoming as the public would like.

Ms. Kourlis reported that judicial performance evaluations offer unique ways to balance judicial independence with accountability. She stated that the first function of performance evaluations is to provide judges with candid feedback from attorneys. Ms. Kourlis remarked that the second purpose of performance evaluations is to allow the voters to trust that judges are accountable for providing a fair process, not for providing a particular outcome. She emphasized that the most important component of a judicial performance evaluation system is for it to be trustworthy in the minds of judges, the people, the Legislature, and the Governor.

Sen. Bell asked what alternatives there are to the bottom up evaluations that seem to be occurring presently where citizens, who may have a political bias, evaluate judges. Mr. Singer responded that there are three states that use court observers in their judicial performance evaluation systems, and that the most important aspect to note with these systems is that the observers are trained ahead of time to only look for things related to the process of judging.

Next, Ms. Kourlis addressed the specific problems that Utah is trying to correct. First, she noted that the information collected is ineffective and insufficient with a possibility that the results are skewed. Secondly, Ms. Kourlis identified a problem with the lack of dissemination of the survey information in a format that instructs voters in what to look for in a judge, where to look for the information, and what that information means. Thirdly, she stated that the composition and appointing authority of the Commission are often contentious issues. Ms. Kourlis proceeded to offer examples of how to solve these common problems with judicial performance evaluations.

Mr. Singer stated that most independent judicial performance evaluation commissions across the country try to balance the three branches of government in the appointing process. He noted that he is not aware of any state that has sitting legislators on a commission. The Task Force discussed the role of sitting judges on the Commission.

Ms. Kourlis advised that the evaluation process needs to assure active attorneys that there is confidentiality and anonymity in the reporting process. Mr. Singer mentioned that citizen involvement in the Commission is important because it helps build the credibility of the Commission, gives a sense of respect for the judiciary in those who participate, and provides the Commission with different perspectives. Sen. Buttars noted that in the draft legislation the commission members are appointed by the Legislature because the Constitution gives the Legislature the responsibility over the judicial retention process. He announced that it is the job of the Task Force to decide whether this responsibility should remain with the Legislature or be shared with the other branches of government.

Sen. Hillyard asked if a "do not retain" recommendation either causes judges to retire, or causes them to be defeated in an election. He also asked if the public generally accepts the recommendation process, and if a recommendation to not retain effects judicial reprimands. Ms. Kourlis responded that in Colorado about 3 percent of the judges receive a do not retain recommendation. Some of those judges will decide not to seek retention. Mr. Singer indicated that a public reprimand does not seem to be a major factor to the voter in whether a judge is retained, but may be a factor in the decision of a performance evaluation

commission as to whether a the judge should be recommended for retention or not. If a commission gives less than a unanimous endorsement to retain the judge, or recommends that the judge not be retained, then the popular vote at the retention election tends to be lower for that judge.

Ms. Kourlis and Mr. Singer continued to make recommendations to the Task Force, and the Task Force continued to discuss the make up of the Commission, the process by which the Commission would conduct its business, the impact of the Commission's recommendations to the voters and to the judges being reviewed, and the distribution of the Commission's recommendations to the public.

Chief Justice Durham remarked that the Judicial Council has observed that there should be certain performance standards that should always be met, but there are often circumstances that need to be taken into consideration when looking at judges who fail to meet specific performance standards.

Chief Justice Durham stated concern with the proposal's lack of discretion in recommendations when judges fail to meet performance standards. Ms. Kourlis responded if the make up of the Commission is such that people trust it, then discretion is appropriate because you want the Commission to make an opinion based on the judge's whole performance, without undermining the credibility of the Commission.

Mr. Gary Ricks, Office of the Legislative Fiscal Analysts discussed the fiscal estimate for the Judicial Performance Evaluation Commission, and answered the Task Force's questions.

Ms. Kourlis emphasized the importance of establishing an independent office for the Judicial Performance Evaluation Commission. She noted that an independent office connotes trustworthiness, and insures that the Commission has its own mission and is free from partisan influence yet has accountability. Ms. Kourlis suggested to the Task Force that the members of the Commission should be appointed by all branches of government, and that the Commission should be sufficiently staffed and adequately funded.

Sen. Buttars suggested to the task force members that they take the proposal home to review, and then come to the next meeting with questions and suggestions. The Task Force asked specific questions and made suggestions about the draft legislation. Sen. Romero asked for copies of Ms. Kourlis and Mr. Singer's comments to be sent to the Task Force.

Chief Justice Durham argued that it would be difficult to trust a commission that had sitting legislators on it since legislators have political pressures. Ms. Kourlis reiterated the importance of balancing the branches of government so that the people can trust the process. She recommended that neither sitting judges nor sitting legislators be permitted to be members of the Commission.

## **5. Other Business / Adjourn**

The Task Force scheduled the next meeting for Monday, October 22, 2007 at 9:00 a.m.

**MOTION:** Rep. Hillyard moved to adjourn the meeting. The motion passed unanimously with Rep. Biskupski absent for the vote.

Chair Buttars adjourned the meeting at 11:51 a.m.